A **FORMOSA RESORT PROPERTIES SDN BHD**

**v.**

**BANK BUMIPUTRA MALAYSIA BHD**

B FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
HASHIM YUSOF FCJ
JAMES FOONG FCJ
[CIVIL APPEAL NO: 02-26-2009 (M)]
C 28 JANUARY 2010

***CIVIL PROCEDURE:*** *Appeal - Question posed before court - Whether substratum of appellant's submission failed to relate to question posed - Whether no miscarriage of justice by courts below*

D In this appeal against the decision of the Court of Appeal reported in p. 530 of this journal, the following question of law was posed before the Federal Court:

> Does the Evidence Act 1950 draw a distinction between the
E relevance and admissibility of evidence?

Apart from the question posed, the appellant argued that there was a miscarriage of justice by the courts below in arriving at their decisions.

F **Held (dismissing the appeal)**
**Per Richard Malanjum CJ (Sabah & Sarawak) delivering the judgment of the court:**

**(1)** The substratum of the appellant's submission did not relate to
G the question posed. Whilst it was trite law that all admissible evidence were relevant evidence, the converse was not necessarily true. Although a piece of evidence might be relevant, it might not be admissible for various reasons such as being hearsay evidence or that its prejudicial effect outweighed its probative
H value. However, in respect of this appeal, an answer to the question posed would neither address the appellant's real grievance nor resolve the dispute between the parties. As such, the court declined to answer the question posed. (paras 13-15)

I **(2)** The main reason given by the Court of Appeal in dismissing the appellant's appeal was that there was a proper and accurate appreciation of the evidence by the trial judge. The errors by the trial judge as contended by the appellant did not amount to a

miscarriage of justice as to warrant the remission of this case to the Court of Appeal for a rehearing. Accordingly, there was no miscarriage of justice or prejudice suffered by the appellant as claimed. (paras 21, 23 & 24)

***Bahasa Malaysia*** *Translation Of Headnotes*

Dalam rayuan ini terhadap keputusan Mahkamah Rayuan yang dilaporkan dalam ms 530 jurnal ini, soalan berikut dikemukakan di Mahkamah Persekutuan:

> Adakah Akta Keterangan 1950 membuat satu perbezaan di antara kerelevanan and keboleh-terimaan masuk keterangan?

Selain daripada soalan yang dikemukakan, perayu berhujah bahawa terdapatnya salah laksana keadilan oleh mahkamah-mahkamah bawahan dalam keputusan mereka.

**Diputuskan (menolak rayuan)**
**Oleh Richard Malanjum HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:**

**(1)** Substratum penghujahan perayu tidak ada kaitannya dengan soalan yang dikemukakan. Walaupun benar ianya undang-undang tetap bahawa semua keterangan yang boleh diterima masuk adalah keterangan yang relevan, namun sebaliknya tidak seharusnya benar. Walaupun satu keterangan mungkin relevan, ianya tidak boleh diterima-masuk atas alasan-alasan berlainan seperti jika ianya keterangan hearsay ataupun kesan perjudisnya melebihi kesan nilai probatifnya. Namun demikian, dalam rayuan semasa, jawapan kepada soalan yang dikemukakan tidak akan menjawab sungutan perayu yang sebenar dan juga tidak akan menyelesaikan pertelingkahan antara parti-parti berkenaan. Maka, mahkamah tidak akan menjawab soalan yang dikemukakan.

**(2)** Alasan utama yang diberikan oleh Mahkamah Rayuan dalam menolak rayuan perayu ialah terdapatnya penilaian keterangan yang tepat dan betul oleh hakim bicara. Kesilapan-kesilapan hakim bicara sepertimana dihujah perayu tidak membawa kepada salah laksana keadilan untuk kes ini diremit ke Mahkamah Rayuan untuk perbicaraan semula. Seterusnya, tiada salah laksana keadilan atau prejudis dialami perayu sepertimana yang didakwanya.

**Case(s) referred to:**

*Joceline Tan Poh Choo & Ors v. V Muthusamy [2009] 1 CLJ 650 FC* ***(refd)***

*Meidi-Ya Co Ltd Japan & Anor v. Meidi (M) Sdn Bhd [2009] 2 CLJ 15 FC* ***(refd)***

*Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Anor v. Arab-Malaysian Prima Realty Sdn Bhd & Ors [2003] 3 CLJ 349 FC* ***(refd)***

*For the appellant - Benjamin Dawson (Chen Wee Kian & Elaine Chong with him); M/s HS Chew & Co*

*For the respondent - Wong Hok Mun; M/s Azim, Tunku Farik & Wong*

*[Appeal from Court of Appeal, Civil Appeal No: M-02-223-2007]*

*[Editor's note: For the Court of Appeal judgment, please see Formosa Resort Properties Sdn Bhd v. Bank Bumiputra Malaysia Bhd [2010] 6 CLJ 530]*

*Reported by Usha Thiagarajah*

## JUDGMENT

**Richard Malanjum CJ (Sabah & Sarawak):**

**[1]** This is an appeal by the appellant (plaintiff in the High Court) against the decision of the Court of Appeal dismissing its appeal on 11 February 2009.

**[2]** On 22 January 2007 the High Court at Melaka dismissed with costs the claim of the appellant against the respondent, a bank, (defendant in the High Court) for allegedly honouring 67 forged cheques amounting to RM411,024.70 drawn on the appellant's current account held with the respondent.

**[3]** On 16 June 2009 this court allowed the appellant leave to appeal on the sole question which reads:

> Does the Evidence Act, 1950 draw a distinction between relevance and admissibility of evidence?'

**[4]** Briefly, the appellant, a housing developer in Melaka, was a customer of the Jalan Hang Tuah's branch of the respondent. The appellant was allowed to draw on its funds in the current account by issuing cheques.

**[5]** It was the appellant's instruction or mandate to the respondent that for any cheque issued it must be signed by any two of the following persons, namely,:

i. Ong Ah Sim @ Ong Swee Hoe

ii. Lim Moi Cheng

iii. Vong Ai Foon

iv. Ong Keng Swee

**[6]** It was also not in dispute that the common feature of those allegedly forged cheques was that they were all encashed over the counter and purportedly signed by Ong Ah Sim @ Ong Swee Hoe and Vong Ai Foon. They were drawn over a period of almost two years from 17 January 1994 to 3 October 1995.

**[7]** The main allegation by the appellant against the respondent was that the purported signatures of Ong Ah Sim @ Ong Swee Hoe on those 67 cheques were forged by his co-signatory Vong Ai Foon or persons unknown and in honouring them the respondent was in breach of the mandate given to it by the appellant.

**[8]** The respondent denied the allegation on two grounds:

a. firstly, that there was no forgery of the signatures of Ong Ah Sim @ Ong Swee Hoe on those cheques; and

b. secondly, the conduct of the appellant's officers gave rise to an estoppel.

**[9]** The High Court gave judgment to the respondent with findings that the appellant failed to prove on the balance of probability that the signatures of Ong Ah Sim @ Ong Swee Hoe on those cheques were forged and that on the facts of this case estoppel had arisen against the appellant from making any claim on those 67 cheques.

**[10]** In affirming the decision of the High Court, the Court of Appeal held that the evidence adduced had been 'demonstrably appreciated' by the learned trial judge who gave cogent reasons for his decision.

**[11]** Before this court, learned counsel for the appellant took a two-pronged approach.

a. Firstly, he submitted that the case should be remitted to the Court of Appeal for rehearing as there was miscarriage of justice occasioned in the earlier hearing.

A b. Secondly, he argued that connected to the question posed the learned High Court trial judge erred in refusing to admit the crucial piece of similar fact evidence adduced before the Sessions Court Melaka in another case between the same parties involving forged cheques of the appellant as well.

B

**[12]** We will deal first with the question posed for consideration.

**[13]** Having heard the submissions of parties and after giving them our anxious consideration we are of the view that the substratum of the submission for the appellant does not relate to the question C posed. Whilst it is trite law that all admissible evidence are relevant evidence, the converse is not necessarily true. Although a piece of evidence may be relevant it may be inadmissible for various reasons such as it is hearsay evidence or its prejudicial effect outweighs its probative value.

D

**[14]** However, in respect of this appeal we are of the view, after careful and closer re-examination of the question posed juxtaposed with the contention advanced for the appellant, an answer to it would neither address the real grievance of the appellant as E ventilated nor resolve the dispute between the parties.

**[15]** As such and relying on the decision of this court in *Sri Kelangkota-Rakan Engineering JV Sdn. Bhd. & Anor v. Arab-Malaysian Prima Realty Sdn. Bhd & Ors* [2003] 3 CLJ 349 we decline to answer F the question posed. (See also: *Joceline Tan Poh Choo & Ors v. V Muthusamy* [2009] 1 CLJ 650 and *Meidi-Ya Co. Ltd Japan & Anor v. Meidi (M) Sdn Bhd.* [2009] 2 CLJ 15).

**[16]** At any rate, even if we were to answer the question posed, it would be in the affirmative. However, for the reasons stated earlier G it would not give any advantage to the appellant.

**[17]** Accordingly, this appeal is dismissed with costs. And that should be the end of this matter.

H **[18]** However, learned counsel for the appellant also strenuously argued that there has been a miscarriage of justice in the conduct of and in the decision-making processes of the courts below.

**[19]** Learned counsel contended that the learned High Court trial I judge committed errors when he described and marked as AR cards (P75 and P76) the specimen signature cards containing the sample signatures of the appellant's cheques' signatories.

**[20]** And whilst PW1 opined that the signature in P76 was the same as in the specimen signature in P73 the Court of Appeal went on to find that PW1 openly admitted that P73 was never compared with those signatures in the specimen signature card kept by the respondent. This according to learned counsel for the appellant resulted in miscarriage of justice.

**[21]** We have examined and re-examined this issue based on the appeal records, in particular the judgments of the courts below. We are inclined to agree with learned counsel for the respondent that even if the Court of Appeal did make an error, the same was only found in the additional reason for the dismissal of the appeal. The main reason given by the Court of Appeal in dismissing the appeal was that there was proper and accurate appreciation of the evidence by the learned High Court Trial Judge before making the necessary findings of fact and ultimately his conclusion.

**[22]** As for the error in describing the specimen signature card as A.R. Card by the learned High Court trial judge we are of the view based on his judgment that such error did not play a critical and determinative role in his final decision. There were more than sufficient evidence upon which he relied upon to come to the conclusion as he did. Indeed the fact that learned counsel for the appellant only requested for the matter to be remitted to the Court of Appeal for rehearing and not to the High Court for retrial is self-evident.

**[23]** In any event, even if indeed there were errors as alleged, we do not think they could amount to miscarriage of justice as to warrant the remission of this matter to the Court of Appeal for rehearing before another panel.

**[24]** Accordingly, we do not find any injustice or prejudice suffered by the appellant as claimed.

**[25]** For the foregoing reasons we decline to exercise the inherent power of this court to order a rehearing of the appeal by the Court of Appeal before another panel.

**[26]** YA Dato' Hashim bin Dato' Hj. Yusof, FCJ and Dato' James Foong Cheng Yuen, FCJ have read this judgment in draft and agreed with it.